

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE MERCK & CO., INC. SECURITIES,
DERIVATIVE & “ERISA” LITIGATION

MDL No. 1658 (SRC)

Civil Action No. 05-1151 (SRC)

Civil Action No. 05-2367 (SRC)

THIS DOCUMENT RELATES TO: THE
CONSOLIDATED SECURITIES ACTION

ORDER

CHESLER, District Judge

This matter having come before the Court upon two motions to dismiss the Corrected Consolidated Fifth Amended Class Action Complaint (the “Complaint”) pursuant to Federal Rule of Civil Procedure 12(b)(6), in particular the motion filed by Defendant Merck & Co., Inc. (“Merck”) to dismiss the claims asserted against Merck and a number of Individual Defenants¹ [docket entry 254] and the separate motion filed by Defendant Edward Scolnick (“Scolnick”) [docket entry 252]; and the motions having been opposed by Plaintiffs; and the Court having considered the papers filed by the parties in connection with the motions; and the Court having held oral argument on the motions on July 12, 2011; and for the reasons expressed in the Opinion

¹ Raymond V. Gilmartin, Peter S. Kim, Alise S. Reicin, Judy C. Lewent, Kenneth C. Frazier, Richard C. Henriques, Jr., David Anstice, Per Wold-Olsen, Richard T. Clark, Bernard J. Kelley, Lawrence A. Bossidy, William G. Bowen, Johnetta B. Cole, Niall FitzGerald, William B. Harrison, Jr. William N. Kelley, Heidi G. Miller, Thomas E. Shenk, Anne M. Tatlock and Samuel O. Thier

filed herewith; and for good cause shown,

IT IS on this 8th day of August, 2011,

ORDERED that Merck's motion to dismiss [docket entry 254] be and hereby is
GRANTED IN PART AND DENIED IN PART; and it is further

ORDERED that the securities fraud claim under Exchange Act § 10(b) and Rule 10b-5 is
DISMISSED insofar as it is based on statements made by Merck and/or Defendant Raymond
Gilmartin on September 30, 2004; and it is further

ORDERED that the securities fraud claim under Exchange Act § 10(b) and Rule 10b-5 is
DISMISSED WITHOUT PREJUDICE insofar as it is asserted against the following
Defendants: Raymond V. Gilmartin, Peter S. Kim, Judy C. Lewent, Kenneth C. Frazier, Richard
C. Henriques, Jr., David Anstice, Per Wold-Olsen, Richard T. Clark, Bernard J. Kelley,
Lawrence A. Bossidy, William G. Bowen, Johnetta B. Cole, Niall FitzGerald, William B.
Harrison, Jr. William N. Kelley, Heidi G. Miller, Thomas E. Shenk, Anne M. Tatlock and
Samuel O. Thier; and it is further

ORDERED that the insider trading claim under Exchange Act § 20A will be
DISMISSED WITHOUT PREJUDICE insofar as it is asserted against the following
Defendants: Gilmartin, Frazier, Lewent, Anstice, Wold-Olsen, Clark and Kelley; and it is further

ORDERED that in all other respects, Merck's motion to dismiss is **DENIED**; and it is
further

ORDERED that Defendant Scolnick's motion to dismiss [docket entry 252] be and
hereby is **GRANTED IN PART AND DENIED IN PART**; and it is further

ORDERED that to the extent the securities fraud claim under Exchange Act § 10(b) and

Rule 10b-5 asserted against Scolnick is predicated upon statements made in Merck's Annual Report for the year 2000, Merck's 2001 Form 10-K, and/or Merck's 2002 Registration Statement, the claim is **DISMISSED**; and it is further

ORDERED that to the extent the control person claim under Exchange Act § 20(a) asserted against Scolnick is predicated on alleged misrepresentations and/or omissions post-dating Scolnick's retirement from Merck, the claim is **DISMISSED**; and it is further

ORDERED that in all other respects, Scolnick's motion to dismiss is **DENIED**.

s/ Stanley R. Chesler
STANLEY R. CHESLER
United States District Judge